IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRI.REVISION APPLICATION NO. 231 OF 2004

Mr. John Hubert Lewis ..Appellant.
Proprietor M/s.Sunny Enterprises,

V/s.

T. Norman D'Souza & Anr. ..Respondents

Shri D.P. Patil for the Appellant.
Shri D.B. Ladge for Respondent No.1.
Shri A.S.Gadkari, APP for Respondent -State.

CORAM : A.M.KHANWILKAR,J.
DATED : JANUARY 11, 2005

PC :-

. Heard counsel for the parties.

2. The only argument canvassed before this court is that the trial is vitiated because of the non-recording of statement of the accused under section 313 of the Cri.P.Code by the trial court before pronouncement of the judgment. In support of this submission reliance was placed on the decision of the Delhi High Court reported in 1985 CRI. L.J.154, in the case of Delhi Development Authority vs. Amarjit Singh; and another decision of the Apex Court reported in (1999) 9 Supreme Court Cases 125, in the

case of Janak Yadav & Ors. vs. State of Bihar. None of these decisions are of any avail to the applicant in the fact situation of the present case. It has been found as of fact that the applicant himself had made an application in writing before the trial court to dispense with his personal appearance throughout the trial and till final disposal of the case. That application was granted. In addition, the trial court has also observed that the Advocate for the accused failed to cross-examine the complainant to show that the issuance of cheque by the accused was not for valuable consideration and it was not for discharge of any legal liability or dues. Besides, the accused failed to give his oral evidence before the court to rebut the presumption which is available on account of section 138 of the Negotiable Instruments Act. In this view of the matter, the trial court cannot be blamed for non- recording of the statement of the applicant under section 313 of the Code, as the applicant himself applied to the court to dispense with his appearance till final disposal of the trial.

3. In the case before the Delhi High Court, the fact situation was different. In asmuch as no such application was made by the accused for dispensing

appearance till the disposal of the trial nor the accused gave up the right to cross-examine or adducing evidence in defence. Even in the case before the Apex Court the fact situation was different. The observations of the Apex Court will have to be understood in the context of the fact situation of that case.

4. As the applicant himself voluntarily waived his right to remain present till disposal of the trial, which request was acceded to by the trial court, no fault can be found with the approach of the trial court in proceeding to pronounce the judgement in the matter. No prejudice can be said to have been caused to the applicant by non-examining himself. Even if the applicant was to be examined, as no evidence has been adduced in defence and there is no effective cross- examination on the material aspects, non- recording of statement under section 313 by itself will not come to the rescue of the applicant.

5. Hence, the revision is hereby dismissed.

6. At this stage the counsel for the applicant prays that the operation of the order passed by the

court below be stayed. I see no reason to accede to the said request. That prayer is rejected.

7. It will be open to the respondents to withdraw the amount already deposited by the applicant in this court pursuant to the interim order passed on 21st July, 2004.

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